

SECRET

IDEA-0310-68  
Copy 1 of 5

25X1A NEGOTIATED CONTRACT

Contract No.

25X1A

Contract For: See Schedule

Amount: See Schedule

Mail Vouchers To:

Performance Period:  
See Schedule

Administrative Data:

This contract is entered into by and between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and the above-named Corporation, incorporated in the State of Delaware, hereinafter called the Contractor.

The parties hereto agree that the Contractor shall furnish the facilities and deliver all supplies and perform all the services set forth in the attached Schedule issued hereunder, for the consideration stated therein.

The rights and obligations of the parties to this contract shall be subject to and governed by the attached Schedule and the General Provisions, which, together with this signature page and the accompanying certificate comprise this Contract No.  In the event of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

25X1A

IN WITNESS WHEREOF, the parties hereto have executed this contract as of 20 JUN 1968.

Signatures:

25X1A

THE UNITED STATES OF AMERICA

BY

Contracting Officer

25X1A

TITLE

SECRET

SECRET

25X1A

Contract No.

25X1A

CERTIFICATE

I, , certify that I am the

25X1A

Corporate Secretary of the Corporation named as Con-

tractor herein; that  who signed

this contract on behalf of the Contractor was then Manager of

25X1A

of said Corporation; that said Contract

was duly signed for and in behalf of said Corporation by

authority of its governing body, and is within the scope of

its Corporate Powers.

25X1A



(Corporate Seal)

SECRET

~~SECRET~~

Contract No.

25X1A

INDEX TO SCHEDULE

PART I	- SERVICES AND SUPPLIES TO BE FURNISHED . . . . .	4
PART II	- PERFORMANCE OF SERVICES . . . . .	4
PART III	- RELATED WORK AND SERVICES . . . . .	5
PART IV	- CONSIDERATION AND PAYMENTS . . . . .	5
PART V	- PERIOD OF PERFORMANCE . . . . .	7
PART VI	- FINANCIAL REPORTS . . . . .	7
PART VII	- SPECIAL SECURITY RESTRICTIONS . . . . .	7
PART VIII	- WAIVER OF REQUIREMENTS OF GENERAL PROVISIONS . . .	8

<sup>3</sup>  
~~SECRET~~

~~SECRET~~

25X1A

Contract No. SCHEDULEPART I - SERVICES AND SUPPLIES TO BE FURNISHED

The Contractor shall provide all necessary equipment, tools, and minor items of material and shall furnish the services of all necessary qualified personnel required to efficiently and expeditiously operate and maintain a plant facility for performing modifications, repairs and overhauls of equipment of the types and kinds produced and delivered under a separate contract between the Contractor and the Government. The Contractor shall also provide liaison with other suppliers of related equipment and shall furnish routine in-plant engineering to analyze equipment returned for modification, repair and overhaul to determine causes of all technical difficulties or malfunctions. Engineering data thereon such as service bulletins, modification data, and technical solutions to problems which will facilitate and support successful field operations shall be furnished. The Contractor shall furnish qualified personnel to the Government's test site for periods of time as may be authorized by the Contracting Officer or his authorized representatives. The Contractor shall train employees, who are acceptable to the Government, for use as field technicians. The Government will issue formal authorization, i.e., Depot Work Orders, or Headquarters Contract Approvals, numbered serially, setting forth the plant work, test site or training services the Government desires to be performed hereunder, together with desired delivery schedules and preservation, packaging, packing and marking requirements therefor. All major items of materials required for modification, repair, or overhaul of the equipment will be available to the Contractor as Government furnished material from the spare parts inventory to be provided and maintained by the Contractor under a separate contract between the Contractor and the Government.

PART II - PERFORMANCE OF SERVICES

A. The extent and character of the work to be done by the Contractor under this contract shall be subject to the general supervision, direction, control and approval of the Contracting Officer or his authorized representative, to whom the Contractor

~~SECRET~~

SECRET

shall report and be responsible. In the event there should be any dispute with regard to the extent and character of the work to be performed, the matter shall be determined as provided in General Provisions 8 Disputes.

B. The Contractor agrees to furnish sufficient personnel of the labor categories specified in APPENDIX I hereof, as well as supervisory and administrative personnel to assure successful prosecution of the work.

C. All operations under the terms of this contract will be done in an efficient and workmanlike manner and by qualified personnel of the Contractor's organization who are thoroughly familiar with the type of work being performed.

D. Services required by the Contractor and performed by the Contractor's personnel of the labor categories specified in APPENDIX I will be considered direct labor under this contract.

### PART III - RELATED WORK AND SERVICES

In addition to the services and supplies to be provided above, the Contractor will perform such other work and services as may be requested by the Contracting Officer or his authorized representative and agreed to by the Contractor, which are necessary to ensure timely performance of the contract work.

### PART IV - CONSIDERATION AND PAYMENTS

A. There has been allotted to this contract the following amount:

<u>Period</u>	<u>Customer</u>	<u>Amount</u>	<u>Total</u>
1 July 1968 - 30 June 1969	Common	\$100,000	
	No. 2	<u>15,000</u>	
Grand Total			\$115,000.00*

\*Represents partial funding and is contingent upon the availability of Government funds for this purpose during FY-69.

Unexpended funds at the end of a period are not authorized for use in a subsequent period. The Contractor shall notify the

SECRET

~~SECRET~~

Contracting Officer the amount of unexpended funds at the end of each period. If, at any time, the Contractor is of the opinion that the cost of the work authorized will exceed the amount allotted for each Customer for a particular period, he shall notify the Contracting Officer of the additional amount required.

B. In accordance with the clause of this contract entitled "Payments," the Contractor shall be paid provisionally as follows:

1. For work and services performed by the Contractor's personnel of the labor categories set forth in APPENDIX I, the Contractor shall be paid the applicable hourly rates stated in the column entitled "CONTRACT HOURLY RATE," in APPENDIX I, as may be amended from time to time, for each Direct Labor hour of work or services actually performed hereunder by such personnel. The time of non-productive personnel will not be included in direct labor, and the Contractor agrees that only direct labor of its personnel of the labor categories designated in APPENDIX I, engaged in the work called for by this contract will be included in its billings hereunder.

2. For materials and supplies furnished by the Contractor or subcontractors under this contract, other than minor items of materials and supplies to be provided without direct cost to the Government, the Contractor shall be reimbursed at actual cost. Materials and supplies, other than minor items of materials and supplies withdrawn from the Contractor's stock for use on this contract, may be charged at prices determined by the Contractor's established method of pricing for its other business. No amount representing profit shall be added to the cost or price of supplies or materials furnished under this contract.

3. For related work and services performed hereunder by the Contractor, payment shall be made in accordance with Paragraph (d) of Clause 6, Payments, of the General Provisions.

C. It is hereby agreed that the "CONTRACT HOURLY RATE" as specified in APPENDIX I are based on straight time wages of Contractor's employees directly engaged in the performance of work under this contract and include all applicable overhead, General and Administrative Expenses and Profit. In the event overtime

~~SECRET~~

**SECRET**

work is determined to be necessary for the performance of the work and is specifically authorized in writing by the Contracting Officer or his authorized representative, it is understood and agreed that the premium portion of any such authorized overtime pay shall be billed as a direct cost in accordance with the Contractor's established accounting practices.

D. Billings submitted by the Contractor shall indicate the Customer, the period involved, and total funds allotted for said period less total of all previous billing thereby showing the balance available for expenditure in that period. Under this amount set forth the amount of the claim for the current month reflecting the Work Orders or other work or services as authorized by the Contracting Officer. The billing submitted for the final claim for a period should have indicated thereon the words "Final Claim" and show thereon the unexpended balance for each customer.

E. The cost of performing work authorized under this Contract shall be charges to the funds allotted for the period in which the work was actually performed regardless of when the authorization was received by the Contractor.

#### PART V - PERIOD OF PERFORMANCE

This contract shall be effective for the period 1 July 1968 through 30 June 1969. The contract may be extended by mutual agreement between the parties hereto.

#### PART VI - FINANCIAL REPORTS

The Contractor shall furnish Monthly Financial Reports in accordance with OSA-2266-67, as amended by OSA-4006-67.

#### PART VII - SPECIAL SECURITY RESTRICTIONS

The Contractor shall not reveal (i) the specific nature or any details of the work being performed hereunder or (ii) any information whatsoever with respect to the department of the Government sponsoring this contract and the work thereunder except as the Contractor is directed to reveal, in writing, such

**SECRET**

~~SECRET~~

Approved For Release 2002/08/29 : CIA-RDP71B00697R001800110017-0

information by the Contracting Officer or by his duly authorized representative for security matters, and, notwithstanding any clause or section of this contract to the contrary, the Contractor shall not interpret any clause or section of this contract as requiring or permitting divulgence of such information to any person, public or private, or to any officer or department of the Government without the express consent of the Contracting Officer or his duly authorized representative for security matters.

#### PART VIII - WAIVER OF REQUIREMENTS OF GENERAL PROVISIONS

Notwithstanding the requirements of any of the General Provisions of this contract to the contrary, whensoever the Contractor, in performance of the work under this contract, shall find that the requirements of any of the clauses of the General Provisions are in conflict with security instructions issued to the Contractor by the Contracting Officer or by his duly authorized representative for security matters, the Contractor shall call the attention of the Contracting Officer to such conflict and the Contracting Officer or his duly authorized representative for security matters shall (i) modify or rescind such security requirements or (ii) the Contracting Officer shall issue to the Contractor a waiver of compliance with the requirements of the General Provisions conflicting with such security requirements. Any waiver of compliance with the General Provisions of this contract issued by the Contracting Officer shall be in writing, except that the approval by the Contracting Officer of any subcontract issued hereunder by the Contractor shall be deemed to constitute approval of waiver of any clauses of the General Provisions in conflict with the stipulations of such subcontract.

~~SECRET~~

Approved For Release 2002/08/29 : CIA-RDP71B00697R001800110017-0



25X1A

Approved For Release 2002/08/29 : CIA-RDP71B00697R001800110017-0

Next 2 Page(s) In Document Exempt

Approved For Release 2002/08/29 : CIA-RDP71B00697R001800110017-0

# SECRET GENERAL PROVISIONS

AFLC-WPAFB-OCT 65 10M

## TIME AND MATERIALS CONTRACTS

1. **DEFINITIONS.** (Feb. 1962)—As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "head of the agency" or "Secretary" means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

2. **CHANGES.** (Mar. 1964)—The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change requires an increase or decrease in any hourly rate or in the ceiling price provided for in this contract, or in the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in the (i) ceiling price, (ii) hourly rates, (iii) delivery schedule, and (iv) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

3. **EXCUSABLE DELAYS.** (Jul. 1958)—Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy; acts of the Government; embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination."

4. **TERMINATION.** (Mar. 1964)—(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time, in part:

- (i) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten (10) days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or
- (ii) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in the performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

SECRET

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be payable by the Government in whole or in part, in accordance with the provisions of this contract;
- (vi) transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;
- (vii) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; provided, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;
- (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting any amount due or owing under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list. Any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d) above, as to the amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any Settlement Review Board approvals required by Section VIII of the Armed Services Procurement Regulation in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination, and shall pay to the Contractor the amount determined as follows:

(i) if the termination of the contract is determined to be for the convenience of the Government, there shall be included—

- (A) an amount for direct labor hours (as defined in the Schedule of the contract) which shall be determined by multiplying the number of direct labor hours expended prior to the effective date of the Notice of Termination by the hourly rate or rates set forth in the Schedule, less any hourly rate payments theretofore made to the Contractor;
- (B) an amount (computed pursuant to the provisions of the contract providing for payment for materials) for material expenses incurred prior to the effective date of the Notice of Termination, not previously paid to the Contractor for the performance of this contract;
- (C) an amount for labor and material expenses computed as if the expenses were incurred prior to the effective date of the termination reasonably incurred after the effective date of the Notice of Termination with the approval of or as directed by the Contracting Officer, provided that the Contractor shall discontinue such expenses as rapidly as practicable;
- (D) to the extent not included in (A), (B), and (C) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (v) above, which are properly chargeable to the terminated portion of this contract; and
- (E) the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; or

(ii) if the termination of the contract is for the default of the Contractor, there shall be included the amounts computed in accordance with (i) above except there shall not be included—

- (A) any amount for the preparation of the Contractor's settlement proposal; or
- (B) the portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(f) The Contractor shall have the right of appeal, under the "Disputes" clause of this contract, from any determination made by the Contracting Officer under paragraphs (c) or (e), above, except that if the Contractor has failed within the time provided in paragraph (c), above, to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e), above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder, or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause, there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract; (ii) any claim which the Government may have against the Contractor in connection with this contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the hourly rates for direct labor hours with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government under such terms and conditions as it prescribes may make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract, whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of six (6) percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; provided, however that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

- \* 5. **GOVERNMENT PROPERTY (COST-REIMBURSEMENT) (June 1965)** (a) **Government-Furnished Property.** The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or Specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the ceiling price, hourly rate, the delivery or performance date, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the ceiling price, hourly rate, the delivery or performance date, or all of them, and any other contractual provisions affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) **Title.** Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) **Property Administration.** The Contractor shall comply with the provisions of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation), as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

(e) **Use of Government Property.** The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) **Maintenance of Government Property.** The Contractor shall maintain and administer in accordance with sound industrial practice, a program for the maintenance, repair, protection and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government property.

(g) **Risk of Loss.**

(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) all or substantially all of the Contractor's business; or

(B) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(C) a separate and complete major industrial operation in connection with the performance of this contract;

(ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or

(B) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (f) hereof;

(iii) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in

the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provisions for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of—

- (i) the lost, destroyed and damaged Government property;
- (ii) the time and origin of the loss, destruction or damage;
- (iii) all known interests in commingled property of which the Government property is a part; and
- (iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action, as the Contracting Officer directs. For any such repairs or renovations so directed, the Contracting Officer shall, upon written request of the Contractor, equitably adjust the ceiling price, hourly rate, delivery or performance date, or all of them in accordance with the procedures provided for in the clause of this contract entitled "Changes." In any such equitable adjustment due regard shall be given to the liability of the Contractor as determined under (1) above.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignments in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(5) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft.

(h) Access. The Government, and any persons designated by it, shall at all reasonable times have access to the premises where any of the Government property is located, for the purpose of inspecting the Government property.

(i) Final Accounting and Disposition of Government Property. Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(j) Restoration of Contractor's Premises. Unless otherwise provided herein, the Government:

- (i) may abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and
- (ii) shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of, the Contractor's plant or any portion thereof which is affected by the abandonment or removal of any Government property.

(k) Communications. All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

\* 6. PAYMENTS (June 1965)—The Contractor shall be paid as follows upon the submission of invoices or vouchers approved by the Contracting Officer.

(a) Hourly Rate.

(1) The amounts computed by multiplying the appropriate hourly rate, or rates, set forth in the Schedule by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or his designee. The Contractor will substantiate vouchers by evidence of actual payment and by individual daily job timecards, or such other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the provisions of (e) below, make payment thereon as approved by the Contracting Officer.

(2) Unless otherwise set forth in the Schedule, five percent (5%) of the amount due under this paragraph (a) shall be withheld from each payment by the Contracting Officer but the total amount withheld shall not exceed



(3) Unless provisions of the Schedule hereof otherwise specify, the hourly rate or rates set forth in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates will be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the "Disputes" clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) **Materials and Subcontracts.**

(1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Part 2, Section XV, of the Armed Services Procurement Regulation in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material at cost to the extent they are clearly excluded from the hourly rate. The Contractor shall support all material costs claimed by submitting paid invoices or storeroom requisitions, or by other substantiation acceptable to the Contracting Officer. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(2) The cost of subcontracts which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder, provided such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts actually required to be paid by the Contractor to the subcontractor and shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, which costs are included in the hourly rate or rates payable under (a) (1) above.

(3) The Contractor shall, to the extent of his ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify the Contracting Officer to that effect, and give the reason therefor. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(c) It is estimated that the total cost to the Government for the performance of this contract will not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs which will accrue in the performance of this contract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed eight-five percent (85%) of the ceiling price then set forth in the Schedule, the Contractor shall notify the Contracting Officer to that effect giving his revised estimate of the total price to the Government for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for the performance of this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving his revised estimate of the total price for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Government has reason to believe that the work to be required in the performance of this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price set forth in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs have been incurred after such increase in the ceiling price.

(e) At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and substantiating material as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts which are found by the Contracting Officer not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents and the provisions of (f) and (g) below), the Government shall as promptly as may be practicable pay any balance due and owing the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract, but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion.

(f) The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

- (i) specified claims in stated amounts, or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;
- (ii) claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the

Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

- (iii) claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) The Contractor agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Contractor or any assignee, which arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to the Contracting Officer.

7. **ASSIGNMENT OF CLAIMS.** (Feb. 1962)—(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

8. **DISPUTES.** (Jan. 1958)—(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

9. **CONVICT LABOR.** (Mar. 1949)—In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

10. **SUBCONTRACTS.** (Mar. 1964)—(a) No contract shall be made by the Contractor for the furnishing of any of the work herein contracted for without the written approval of the Contracting Officer. For the purpose of this clause, purchase of raw material or commercial stock items shall not be considered work.

(b) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-percentage-of-cost basis.

11. **CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION.** (June 1964)—This contract, to the extent that it is of a character specified in the Contract Work Hours Standards Act (40 U.S.C. 327-330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).



Approved For Release 2002/08/29 : CIA-RDP71B00697R001800110017-0

(d) Such contract shall include paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

**12. WALSH-HEALEY PUBLIC CONTRACTS ACT. (Jan. 1958)**—If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

**13. EQUAL OPPORTUNITY (Apr. 1964).**

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity (41 C.F.R. Chapter 60). Exemptions include contracts and subcontracts (i) not exceeding \$10,000, (ii) not exceeding \$100,000 for standard commercial supplies or raw materials, and (iii) under which work is performed outside the United States and no recruitment of workers within the United States is involved.)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor.\* The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

\* Unless otherwise provided, the "Equal Opportunity" clause is not required to be inserted in subcontracts below the second tier, except for subcontracts involving the performance of "construction work" at the "site of construction" (as those terms are defined in the Committee's rules and regulations) in which case the clause must be inserted in all such subcontracts. Subcontracts may incorporate by reference the "Equal Opportunity" clause.

**14. OFFICIALS NOT TO BENEFIT. (Jul. 1949)**—No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**15. COVENANT AGAINST CONTINGENT FEES. (Jan. 1958)**—The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

16. AUDIT AND RECORDS. (Sep. 1964)

(a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitute "records" for the purposes of this clause.

(b) The Contractor's plants, or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his authorized representative.

(c) The Contractor shall preserve and make available his records (i) until the expiration of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the "Disputes" clause of this contract or (ii) litigation or the settlement of claims arising out of the performance of this contract, shall be retained until such appeals, litigation, or claims have been disposed of.

(d) (1) The Contractor shall insert the substance of this clause, including the whole of this paragraph (d), in each subcontract hereunder that is not on a firm fixed-price basis.

(2) The Contractor shall insert the substance of the following clause in each firm fixed-price subcontract hereunder in excess of \$100,000, except those subcontracts covered by subparagraph (3) below.

**AUDIT—**

(a) For purposes of verifying that cost or pricing data submitted in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of \$100,000 are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall—until the expiration of three years from the date of final payment under this contract—have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(b) The Contractor agrees to insert the substance of this clause including this paragraph (b) in all subcontracts hereunder in excess of \$100,000 unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(3) The Contractor shall insert the substance of the following clause in each firm fixed-price subcontract hereunder in excess of \$100,000 where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

**AUDIT—PRICE ADJUSTMENTS**

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000 unless the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation and further provided that such change or other modification to this contract must result from a change or other modification to the Government prime contract.

(b) For purposes of verifying that any cost or pricing data submitted in conjunction with a contract change or other modification involving an amount in excess of \$100,000 are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall—until the expiration of three years from the date of final payment under this contract—have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of the Contractor's Certificate of Current Cost or Pricing Data.

(c) The Contractor agrees to insert the substance of this clause including this paragraph (c) in all subcontracts hereunder in excess of \$100,000, so as to apply until three years after final payment of the subcontract.

17. EXAMINATION OF RECORDS. (Nov. 1962)

(a) (1) The Contractor agrees to maintain books, records, documents, and other evidence pertaining to the costs and expenses of this contract (hereinafter collectively called the "records") to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, equipment, supplies and services, and other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this contract.

(2) The Contractor agrees to make available at the office of the Contractor at all reasonable times during the period set forth in subparagraph (4) below any of the records for inspection, audit or reproduction by any authorized representative of the Comptroller General.

(3) In the event the Comptroller General or any of his duly authorized representatives determines that his audit of the amounts reimbursed under this contract as transportation charges will be made at a place other than the office of the Contractor, the Contractor agrees to deliver, with the reimbursement voucher covering such charges or as may be otherwise specified within two years after reimbursement of charges covered by any such voucher, to such representative as may be designated for that purpose through the Contracting Officer, such documentary evidence in support of transportation costs as may be required by the Comptroller General or any of his duly authorized representatives.

(4) Except for documentary evidence delivered pursuant to subparagraph (3) above, the Contractor shall preserve and make available his records (i) for a period of three years from the date of final payment under this contract, and (ii) for such longer period, if any, as is required by applicable statute, by any other clause of this contract, or by (A) or (B) below.

(A) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(B) Records which relate to (i) appeals under the Disputes clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) cost and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall be retained by the Contractor until such appeals, litigation, claims, or exceptions have been disposed of.

(5) Except for documentary evidence delivered pursuant to subparagraph (3) above, and the records described in subparagraph (4) (B) above, the Contractor may in fulfillment of his obligation to retain his records as required by this clause substitute photographs, microphotographs, or other authentic reproductions of such records, after the expiration of two years following the last day of the month of reimbursement to the Contractor of the invoice or voucher to which such records relate, unless a shorter period is authorized by the Contracting Officer with the concurrence of the Comptroller General or his duly authorized representative.

(6) The provisions of this paragraph (a), including this subparagraph (6), shall be applicable to and included in each subcontract hereunder which is on a cost, cost-plus-a-fixed-fee, time-and-material or labor-hour basis.

(b) The Contractor further agrees to include in each of his subcontracts hereunder, other than those set forth in subparagraph (a) (6) above, a provision to the effect that the subcontractor agrees that the Comptroller General or any of his duly authorized representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract," as used in this paragraph (b) only, excludes (i) purchase orders not exceeding \$2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

**18. GRATUITIES. (Mar. 1952)—**(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

**\* 19. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT. (Jan. 1965)—**The provisions of this clause shall be applicable only if the amount of this contract exceeds \$10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) This clause shall be included in all subcontracts.

**20. AUTHORIZATION AND CONSENT. (Mar. 1964)—**The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

**21. INSPECTION AND CORRECTION OF DEFECTS. (Mar. 1964)—**(a) All materials furnished and services performed by the Contractor under this contract shall be subject to inspection and test by the Government to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance. The Government, through any authorized representative, may inspect the plant or plants of the Contractor

or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of services performed and materials furnished under this contract shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after acceptance of the services or materials last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any services or materials which at the time of delivery thereof failed to comply with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, below, the allowability of the cost of any such replacement or correction shall be determined as provided in the "Payments" clause of this contract, but the "hourly rate" for labor hours incurred in such replacement or correction shall be reduced so as to exclude the portion of such rate attributable to profit. Corrected or replacement materials and services shall not be tendered again for acceptance unless the former tender and the requirement of correction or replacement is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, and if such replacement or correction may be performed within the ceiling price, or the ceiling price as increased by the Government, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, and may deduct such increased cost from any amounts due the Contractor under this contract (or require repayment of any payments theretofore made), or (ii) may terminate this contract for default as provided in the "Termination" clause of this contract. Failure to agree to the amount of any such increased cost to be charged to the Contractor, or to such reduction in, or repayment of, any amount due under this contract, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; (iii) a separate and complete major industrial operation in connection with the performance of this contract; or (iv) all or substantially all of the Contractor's operations under this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory person has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of this clause shall apply to any corrected or replacement services or materials.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, and the work and services hereunder. Records of all inspection work by the Contractor shall be complete and available to the Government at all reasonable times during performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace materials furnished and services performed under this contract which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the "Government Property" clause of this contract.

(h) If this contract calls for inspection and acceptance at the Contractor's plant the last sentence of paragraph (a) shall be deemed deleted and the following substituted in lieu thereof:

Acceptance by the Government of all the items (other than aircraft to be flown away, if any) to be furnished under this contract shall be at the plant or plants of the Contractor specified in the Schedule, or any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the inspector or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time such inspection and test are requested by the Contractor.

\* 22. NEW MATERIAL. (Jan. 1965)—Except as to any supplies and components which the Specification or Schedule specifically provides need not be new, the Contractor represents that the supplies and components including any former Government property identified pursuant to the "Government Surplus" clause of this contract to be provided under this contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this contract, the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, he shall notify the Contracting Officer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to the Government if authorization to use such supplies is granted.

\* 23. GOVERNMENT SURPLUS. (Jan. 1965)—(a) In the event the proposal is based on furnishing items or components which are former Government surplus property or residual inventory resulting from terminated Government contracts, a complete description of the items or components, quantity to be used, name of Government agency from which acquired, and date of acquisition shall be set forth on a separate sheet to be attached to proposal.

Notwithstanding any information classified in accordance with this provision, items furnished by the Contractor must comply in all respects with the specifications contained herein.

(b) Except as disclosed by the Contractor in (a) above, no property of the type described herein shall be furnished under this contract unless approved in writing by the Contracting Officer.

**24. RENEGOTIATION. (Oct. 1959)**—(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

**25. UTILIZATION OF SMALL BUSINESS CONCERNS. (Jan. 1958)**—(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

**26. UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS. (Feb. 1962)** (The provisions of this clause shall be applicable if this contract is in excess of \$5,000.00). It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; and (v) small business concerns which are not labor surplus area concerns.

**27. MILITARY SECURITY REQUIREMENTS. (Jun. 1958)** (a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" including "Confidential—Modified Handling Authorized" or higher.

(b) The Government shall notify the Contractor of the security classifications of this contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254), or other written notification.

(c) To the extent the Government has indicated as of the date of this contract or thereafter indicates security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within his own organization in accordance with the requirements of—

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on the date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.



28. **PRIORITIES, ALLOCATIONS, AND ALLOTMENTS.** (Jan. 1961)—The Contractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this order.

29. **BUY AMERICAN ACT.** (May 1964)—(a) In acquiring end products, the Buy American Act (41 U.S.C. 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

- (i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;
- (ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and
- (iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. For the purposes of this (a) (iii) (B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

- (i) which are for use outside the United States;
- (ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
- (iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or
- (iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954. So as to alleviate the impact of Department of Defense expenditures on the United States balance of international payments, bids offering domestic source end products normally will be evaluated against bids offering other end products by adding a factor of fifty percent (50%) to the latter, exclusive of import duties. Details of the evaluation procedure are set forth in Section VI of the Armed Services Procurement Regulation.)

30. **NOTICE TO THE GOVERNMENT OF LABOR DISPUTES.** (Sep. 1958)—(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

31. **LIMITATION ON WITHHOLDING OF PAYMENTS.** (Sep. 1958)—If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; provided, that this limitation shall not apply to—

- (i) withholdings pursuant to any clause relating to wages or hours of employees;
- (ii) withholdings not specifically provided for by this contract; and
- (iii) the recovery of overpayments.

32. **INTEREST.** (May 1963)—Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest at the rate of six percent per annum from the date due until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first written demand for payment, consistent with the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

\* 33. **PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.** (Sep. 1964)

(a) If the Contracting Officer determines that any price, including profit or fee, negotiated in connection with this contract was increased by any significant sums because the Contractor, or any subcontractor in connection with a subcontract covered by (c) below, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the Contractor's Certificate of Current Cost or Pricing Data, then such price shall be reduced accordingly and the contract shall be modified in writing to reflect such adjustment.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) The Contractor agrees to insert the substance of paragraphs (a) and (c) of this clause in each of his cost-reimbursement type, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder in excess of \$100,000 unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds \$100,000, the Contractor shall insert the substance of the following clause.

**PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—PRICE ADJUSTMENTS**

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause shall be limited to such price adjustments.

(b) If the Contractor determines that any price, including profit or fee, negotiated in connection with any price adjustment within the purview of paragraph (a) above was increased by any significant sum because the subcontractor or any of his subcontractors in connection with a subcontract covered by paragraph (c) below, furnished incomplete or inaccurate cost or pricing data, or data not current as of the date of execution of the subcontractor's certificate of current cost or pricing data, then such price shall be reduced accordingly and the subcontract shall be modified in writing to reflect such adjustment.

(c) The subcontractor agrees to insert the substance of this clause in each subcontract hereunder which exceeds \$100,000.

★ **34. SUBCONTRACTOR COST AND PRICING DATA (Sep. 1964)**

(a) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract; (ii) prior to the award of any subcontract the price of which is expected to exceed \$100,000; (iii) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except in the case of (ii) or (iii) where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of his cost-reimbursement type, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds \$100,000 except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of \$100,000, the Contractor shall insert the substance of the following clause:

**SUBCONTRACTOR COST AND PRICING DATA—PRICE ADJUSTMENTS**

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to award of any cost-reimbursement type, incentive or price redeterminable subcontract; (ii) prior to award of any subcontract, the price of which is expected to exceed \$100,000; (iii) prior to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000; except, in the case of (ii) or (iii), where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceed \$100,000.

**35. SHIPMENTS.—(Oct. 1957)—**(a) Unless otherwise provided in this contract or unless the Contracting Officer acting under the "Changes" clause hereof directs in writing otherwise, all supplies to be furnished under this contract shall be delivered f.o.b. carrier's equipment at the plant or plants at which such supplies are to be finally inspected and accepted, or if the facilities for shipment by carrier's equipment are not available at the Contractor's plant, f.o.b. the point or points nearest thereto that carrier service is available. When the carrier's equipment is rail, any shipment occupying sufficient space in a railroad car to constitute a carload shipment subject to carload freight rates shall be properly and adequately loaded in freight cars by the Contractor, and any shipment subject to less-than-carload freight rates shall be delivered by the Contractor into the carrier's possession at the Contractor's plant, or at the point or points nearest thereto at which delivery can be effected.

(b) Whenever it is provided in this contract that supplies shall be delivered f.o.b. specified destinations, such supplies shall be shipped direct by the Contractor to the specified destinations on commercial bills of lading, at the

expense of the Contractor. Provided, however, that nothing contained herein shall preclude reimbursement of the Contractor by the Government of any such transportation expenses if this is a cost-reimbursement type contract.

(c) Notwithstanding other provisions of this contract, shipments made under cost reimbursement contracts which do not exceed (i) 1000 pounds if shipped by rail, truck, or freight forwarder, or (ii) 100 pounds if shipped by railway express, or (iii) 50 pounds if shipped by commercial air, shall be made by commercial bills of lading, charges to destination(s) paid by the Contractor.

(d) If the Contracting Officer directs in writing that any of the supplies to be furnished hereunder be delivered to a carrier for shipment from a point other than specified in this contract, equitable adjustment shall be made in the contract price in the manner provided in the general provisions of this contract entitled "Changes."

(e) **Shipping Instructions.** If not otherwise provided herein, names of consignees of all supplies to be delivered by the Contractor hereunder will be furnished in writing by the Contracting Officer at a later date. Request therefor shall be made to such address as the Contracting Officer may direct, not later than thirty (30) days prior to the date on which any of the articles are ready for shipment.

(f) **Routing Instructions.** If not otherwise provided herein and deliveries are other than f.o.b. specified destinations, Government routing instructions will be furnished to the Contractor in writing by the Contracting Officer at a later date. If the Government routing instructions have not been received by the Contractor thirty (30) days prior to date on which any of the articles are anticipated to be ready for shipment, request therefor shall immediately be made to the cognizant transportation activity specified herein.

(g) **Notice of Shipments.** (Jul. 1949) At the time of delivery of any shipment of supplies to a carrier for transportation, the Contractor shall give prepaid notice of shipment to the consignee establishment, and to such other persons or installations designated by the Contracting Officer, in accordance with instructions of the Contracting Officer. If such instructions have not been received by the Contractor at least 24 hours prior to such delivery to a carrier, the Contractor shall request instructions from the Contracting Officer concerning the notice of shipment to be given.

(h) **Computation of Delivery Time.** For the purpose of determining the fulfillment of this contract so far as delivery dates are concerned, in the event the delivery point or points are not the same as the point or points of destination, the time of delivery of the supplies shall be the date of delivery to the carrier ready for shipment to destination.

(i) **Shipments by the Government.** Unless this is a cost-reimbursement type contract, any articles, supplies or other items to be delivered by the Government to the Contractor shall, unless otherwise provided herein, be delivered to the Contractor f.o.b. carrier's equipment at the plant or plants of the Contractor designated, or if facilities for shipment by carrier's equipment are not available at the Contractor's plant or plants, f.o.b. the point or points nearest thereto that carrier's equipment is available.

(j) Where the contract provides that inspection and acceptance shall be accomplished at a subcontractor's plant (whether in whole or in part) the foregoing provisions, except paragraphs (e) and (f), shall be equally applicable to such subcontractors as provided in said subcontract. Subcontractors' shipping instructions and routing instructions, if not previously furnished, shall be requested from the Prime Contractor.

**36. SUPERSEDING SPECIFICATIONS.** (Jul. 1948)—All references in any Government specification incorporated herein to other Government specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referred to, to the extent that such supplementary or superseding specifications are in effect at the date of Contractor's latest quotation, if the Contractor was furnished or otherwise notified of the existence of such supplementary or superseding specifications at the time of said quotation.



37 PATENT RIGHTS (LICENSE) (May 1964)

(a) Definitions Used in This Clause.

- (1) Subject Invention means any invention or discovery, whether or not patentable, conceived or first actually reduced to practice in the course of or under this contract. The term 'Subject Invention' includes, but is not limited to, any art, machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States of America or any foreign country.
- (2) Governmental purpose means the right of the Government of the United States (including any agency thereof, state or domestic municipal government) to practice and have practiced (make or have made, use or have used, sell or have sold) any Subject Invention throughout the world by or on behalf of the Government of the United States.
- (3) Contract means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.
- (4) Subcontract and subcontractor mean any subcontract or subcontractor of the Contractor, any lower-tier subcontract or subcontractor under this contract.
- (5) To bring to the point of practical application means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine or system and, in each case, under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) Rights Granted to the Government.

- (1) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, and royalty-free license to practice and have practiced each Subject Invention (made by the Contractor) throughout the world for Governmental purposes. In addition, the Government shall have the right to grant licenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development, or production of weapons or equipment for mutual defense and shall include the practice of such Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method, or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

(b) Rights Granted to the Government.

- (1) (This paragraph applies if this contract has as one of its purposes the performance of research and development work under a space program, project or task and paragraph (b)(1) above is made inapplicable.) The Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive and royalty-free license to practice and have practiced each Subject Invention (made by the Contractor) throughout the world for Governmental purposes. In addition, the Government shall have (a) the right to grant licenses to any foreign government or international organization specifically for use in programs established by International Agreements for research, development or production of weapons or equipment for mutual defense and (b) the right to grant licenses to others, under such terms and conditions as may be prescribed, for the practice of such Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor, and shall include the practice of such Subject Invention in the manufacture, use, and disposition of any article or material, in the use of any method or in the performance of any service acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or otherwise through the Government.

- (2) The Contractor further agrees to grant, upon the request of the Government, a license under any Subject Invention (made by the Contractor) to:

- (i) any applicant on a nonexclusive, royalty-free basis, unless the Contractor, his licensee, or his assignee demonstrates to the Government, at its request, that effective steps have been taken within three years after a patent issues on such Invention to bring the Invention to the point of practical application or that the Invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time;
- (ii) any applicant royalty-free or on terms that are reasonable in the circumstances to the extent that the Invention is required for public use by governmental regulations or as may be necessary to fulfill health needs, or for other public purposes stipulated in the Schedule of this contract.

Nothing contained in this Patent Rights clause shall be deemed to grant any rights with respect to any invention other than a Subject Invention.

- (c) Invention Disclosures and Reports. With respect to Subject Inventions (made by the Contractor), the Contractor shall furnish to the Contracting Officer:

- (i) a written disclosure of each such Invention within four (4) months after conception or first actual reduction to practice, whichever occurs first under this contract, sufficiently complete as to technical detail to convey to one skilled in the art to which the Invention pertains a clear understanding of the nature, purpose, operation and, as the case may be, physical, chemical or electrical characteristics of the Invention, together with a written statement making an election as to whether a United States patent application claiming the Invention will be filed by or on behalf of the Contractor;

- (ii) Interim reports at least every twelve (12) months, the initial period of which shall commence with the date of this contract, each report listing all such Inventions conceived or first actually reduced to practice more than three (3) months prior to the date of the report and not listed on a prior interim report, or certifying that there are no such unreported Inventions;

- (iii) prior to final settlement of this contract, a final report listing all such Inventions including all those previously listed in interim reports, or certifying that there are no such unreported Inventions; and

(iv) written reports at reasonable intervals, prior to and after final settlement, when requested by the Government, as to:

- (A) the commercial use that is being made or is intended to be made of such invention;
- (B) the steps taken by the Contractor to bring the invention to the point of practical application, or to make the invention available for licensing.

(d) Domestic Filing. In connection with each Subject Invention referred to in (c)(1) above:

(i) If the Contractor has elected to file a United States patent application claiming such invention, the Contractor shall, within six (6) months after the election, file or cause to be filed such application in due form and shall so notify the Contracting Officer at the time of such filing; if the Contractor does not file or cause to be filed such application, he shall notify the Contracting Officer within the six (6) month period;

(ii) If the Contractor has elected not to file or to cause to be filed a United States patent application claiming such invention, or has made the contrary election but has not filed or caused to be filed such application within six (6) months after the election, the Contractor shall:

(A) inform the Contracting Officer in writing, as soon as practicable, of the date and identity of any public use, sale, or publication of such invention made by or known to the Contractor or of any contemplated publication by the Contractor;

(B) upon written request, convey to the Government the Contractor's entire right, title and interest in such invention by delivering to the Contracting Officer such duly executed instruments (prepared by the Government) of assignment and application, and such other papers as are deemed necessary to vest in the Government the entire right, title, and interest aforesaid, and the right to apply for and prosecute patent applications covering such invention throughout the world, subject to the reservation of a nonexclusive and royalty-free license to the Contractor (and to his existing and future associated and affiliated companies, if any, within the corporate structure of which the Contractor is a part) which license shall be assignable to the successor of that part of the Contractor's business to which such invention pertains;

(iii) the Contractor shall furnish promptly to the Contracting Officer on request an irrevocable power of attorney to inspect and make copies of each United States patent application filed by or on behalf of the Contractor covering any such invention;

(iv) In the event the Contractor, or those other than the Government deriving rights from the Contractor, elects not to continue prosecution of any such United States patent application filed by or on behalf of the Contractor, the Contractor shall so notify the Contracting Officer not less than sixty (60) days before the expiration of the response period and, upon written request, deliver to the Contracting Officer such duly executed instruments (prepared by the Government) as are deemed necessary to vest in the Government the entire right, title, and interest in such invention and the application, subject to the reservation as specified in paragraph (d)(ii)(B) of this clause;

(v) the Contractor shall deliver to the Contracting Officer duly executed instruments fully confirmatory of all rights herein agreed to be granted or reserved to the Government.

(e) Foreign Filing. The Contractor, or those other than the Government deriving rights from the Contractor, shall as between the parties hereto, have the exclusive right, subject to the rights of the Government under paragraph (b) of this clause, to file applications on Subject Inventions (made by the Contractor) in each foreign country within:

(i) nine (9) months from the date a corresponding United States application is filed, or nine (9) months from the date the Contractor discloses a Subject Invention under paragraph (c)(1) above with an election not to file a United States application;

(ii) six (6) months from the date permission is granted to file foreign applications where such filing had been prohibited for security reasons; or

(iii) such longer period as may be approved by the Contracting Officer.

The Contractor shall notify the Contracting Officer of each foreign application filed and, upon written request of the Contracting Officer, convey to the Government the entire right, title, and interest in each such Subject Invention in each foreign country in which an application has not been filed within the time above specified, subject to the reservation as specified in paragraph (d)(ii)(B) of this clause.

(f) Withholding of Payment. If the Contractor fails to deliver to the Contracting Officer the interim reports required by (c)(ii) above, or fails to furnish the written disclosures for all Subject Inventions required by (c)(i) above shown to be due in accordance with any interim report delivered under (c)(ii) or otherwise known to the Government to be unreported, there shall be withheld from payment, until the Contractor shall have corrected such failures, either ten percent (10%) of the amount of this contract, as from time to time amended, or ten thousand dollars (\$10,000), whichever is less. After payment of eighty percent (80%) of the amount of this contract, as from time to time amended, payment shall be withheld until a reserve of either ten percent (10%) of the amount of this contract, or ten thousand dollars (\$10,000) whichever is less, shall have been set aside, such reserve or balance thereof to be retained until the Contractor shall have furnished to the Contracting Officer:

(i) the final report required by (c)(iii) of this clause;

(ii) written disclosures for all inventions required by (c)(i) above which are shown to be due in accordance with interim reports delivered under (c)(ii) above, or in accordance with such final reports, or are otherwise known to the Government to be unreported; and

(iii) the information as to any subcontractor required by (g) below.

No amount shall be withheld under this paragraph when the amount specified by this paragraph is being withheld under other provisions of this contract. The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract. This paragraph shall not be construed as requiring the Contractor to withhold any amounts from a subcontractor to enforce compliance with the patent provision of a subcontract. In cost-type contracts, "amount of this contract" shall mean "estimated cost of this contract."

(g) Subcontracts.

(1) The Contractor shall, unless otherwise authorized or directed by the Contracting Officer, include a patent rights clause containing all of the provisions of this Patent Rights clause except provision (f) in any subcontract hereunder where a purpose of the subcontract is the conduct of experimental, developmental, or research work. In the event of refusal by a subcontractor to accept this Patent Rights clause, or if in the opinion of the Contractor this Patent Rights clause is inconsistent with the policy set forth in ASPR 0-107.2 and 0-107.3, the Contractor:

(i) shall promptly submit a written report to the Contracting Officer setting forth the subcontractor's reason for such refusal or the reasons the Contractor is of the opinion that the inclusion of this clause would be so inconsistent, and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Contracting Officer.

The Contractor shall not, in any subcontract or by using such a subcontract as consideration therefor, acquire any rights to Subject Inventions for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract). Reports, instruments, and other information required to be furnished by a subcontractor to the Contracting Officer under the provisions of such a patent rights clause in a subcontract hereunder may, upon mutual consent of the Contractor and the subcontractor (or by direction of the Contracting Officer) be furnished to the Contractor for transmission to the Contracting Officer.

(2) The Contractor, at the earliest practicable date, shall also notify the Contracting Officer in writing of any subcontract containing a patent rights clause, furnish him a copy of such clause, and notify him when such subcontract is completed. It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all the rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. If there are no subcontracts containing patent rights clauses, a negative report is required. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(h) Licenses Granted by Contractor to Others Subject to Government's Rights. The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for royalties for the use of a Subject Invention on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which the Government holds a royalty-free license. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(i) Rights to Disclose Subject Inventions. The Government may duplicate and disclose reports and disclosures of Subject Inventions required to be furnished by the Contractor or a subcontractor pursuant to this Patent Rights clause.

**38 FILING OF PATENT APPLICATIONS. (Jan. 1955)** (a) Before filing or causing to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below, transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S. Code 181-188 or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the U.S. Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether, for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent statutes or regulations.

(c) In filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter.

**39 RIGHTS IN TECHNICAL DATA. (Feb. 1955)**

(a) Definitions.

(1) Technical Data, as used in this clause, means technical writings, sound recordings, pictorial reproductions, drawings, or other graphic representations and works of a technical nature, whether or not copyrighted, which are specified to be delivered pursuant to this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(2) Limited Rights means rights to use, duplicate, and disclose technical data in whole or in part, by or for the Government, with the express limitation that such data may not be released outside the Government, used, duplicated, or disclosed in whole or in part, for manufacture or procurement, except for:

(i) emergency repair or overhaul work by or for the Government where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; and

(ii) release to a foreign government as the interests of the United States may require;

provided, in either case, that the release of such data shall be subject to the limitations of this paragraph (2).

(3) Unlimited Rights means rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Government Rights.

(1) The Government shall have unlimited rights in:

- (i) technical data resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;
- (ii) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components or processes developed at private expense (but see (2)(ii) below);
- (iii) technical data constituting corrections or changes to Government-furnished data;
- (iv) technical data pertaining to end-items, components or processes which was prepared for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);
- (v) manuals or instructional materials prepared for installation, operation, maintenance or training purposes;
- (vi) other technical data which has been, or is normally furnished without restriction by the Contractor or subcontractor; and
- (vii) technical data listed or described in an agreement incorporated into the Schedule of this contract, which the parties have predetermined, on the basis of subparagraphs (i) thru (vi) above, and agreed will be furnished with unlimited rights.

(2) The Government shall have limited rights in:

- (i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and
- (ii) technical data pertaining to items, components or processes developed at private expense, other than such data as may be included in the data referred to in (b)(1)(i), (iii), (iv), (v), and (vi);

provided that each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above is marked with the following legend in which is inserted the number of the prime contract under which the technical data is to be delivered and the name of the Contractor or subcontractor by whom the technical data was generated: "Furnished under United States Government Contract No. .... Shall not be either released outside the Government, or used, duplicated, or disclosed in whole or in part for manufacture or procurement, without the written permission of ....., except for: (i) emergency repair or overhaul work by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work; or (ii) release to a foreign government, as the interests of the United States may require; provided that in either case the release, use, duplication or disclosure hereof shall be subject to the foregoing limitations. This legend shall be marked on any reproduction hereof in whole or in part."

No legend shall be marked on, nor shall any limitation on rights of use be asserted as to, any data which the Contractor has previously delivered to the Government without restriction. The limited rights provided for by this paragraph (b)(2) shall not impair the right of the Government to use similar or identical data acquired from other sources.

(c) Material Covered by Copyright.

(1) Notwithstanding the provisions of (b) above, the Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive and irrevocable license throughout the world for Government purposes to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.

(2) No such copyrighted matter shall be included in technical data furnished hereunder without the written permission of the copyright owner for the Government to use such copyrighted matter in the manner described above.

(3) The Contractor shall report to the Government (or higher-tier Contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.

(d) Removal of Unauthorized Markings. Notwithstanding any provisions of this contract concerning inspection and acceptance, the Government may modify, remove, obliterate, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if—

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the use of the marking, or

(ii) the Contractor's response fails to substantiate his contention that the use of the marking is authorized, in which case the Government shall give written notice to the Contractor.

(e) Relation to Patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Limitation on Charges for Data. The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(g) Acquisition of Data from Subcontractors.

(1) Whenever any technical data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier Contractor. However, when there is a requirement in the prime contract, or in the deferred order, for data which may be supplied with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in data from their subcontractors for themselves.

40 DATA—WITHHOLDING OF PAYMENT. (Apr. 1965) If "Technical Data" (as defined in the clause of this contract entitled "Rights in Technical Data"), or any part thereof, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by the contract), the Contracting Officer may, until such data is delivered or deficiencies are corrected, withhold payment due the Contractor on account of allowable costs and fixed fee, of ten percent (10%) of the contract price, unless a lesser withholding is specified in the schedule. Payments shall not be withheld nor any other action taken pursuant to this clause where the Contractor's failure to make timely delivery or to deliver data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause hereof entitled "Excusable Delays." The withholding of any amount or subsequent payment thereof to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

41. FLIGHT RISKS (Oct. 1965)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (g) (1) of the Government Property clause and paragraph (c) of the Insurance - Liability to Third Persons clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by the Contracting Officer.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto; provided, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer. As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp;



as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(iii) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed, during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars (\$100,000) or twenty percent (20%) of the ceiling price of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made in the ceiling price, hourly rate, delivery or performance date, or all of them and the contract shall be modified in writing accordingly; provided, in determining the amount of adjustment in the hourly rate that is equitable, any faults of the Contractor, his employees, or any subcontractor which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

#### 42. Alterations in Contract

The following alterations have been made in the provisions of this contract:

(a) Paragraph (k) under Clause 5 "Government Property" is deleted in its entirety.

(b) Under Clause 17 "Examination of Records" the words "Comptroller General or any of his duly authorized representative(s)" are deleted and the following words substituted therefor: "Appropriate Audit Representative of the Government."

(c) Clause 24 "Renegotiation" is deleted in its entirety.

(d) Clause 27 "Military Security Requirements" and in particular paragraphs (c) and (d) thereunder shall be applicable only to the extent as authorized by the Security Representatives of the Contracting Officer.

(c) Clause 35 "Shipments" is deleted in its entirety. Shipments shall be made as provided in the Schedule of this contract or as otherwise indicated by the Contracting Officer or his authorized representative.

(f) Clause 5, "Government Property (Cost-Reimbursement) (June 1965)" is deleted and substituted in lieu there and incorporated herein by this reference is Paragraph 13-703 of ASPR, "Government Property (Cost-Reimbursement) (Apr 1968)".

(g) Clause 16 "Audit and Records (Sep 1964)" is deleted and substituted in lieu thereof and incorporated herein by this reference is Paragraph 7-104.41(c) as revised by DPC No. 57 at Paragraph 79, 132-CCH, "Audit and Records (Nov. 1967)".

(h) Clause 26, "Utilization of Concerns in Labor Surplus Areas, (Feb 1962)" is deleted and substituted in lieu thereof and incorporated herein by this reference is Paragraph 1-805.3

(a) "Utilization of Concerns in Labor Surplus Areas (Nov 1967)".

(i) Clause 33 "Price Reduction for Defective Cost in Pricing Data (Sep 1964)" is deleted and substituted in lieu thereof and incorporated herein by this reference is Paragraph 7-104.29 of ASPR as revised by DPC No. 57 at Paragraph 79, 132-CCH, "Price Reduction for Defective Cost or Pricing Data (Nov 1967)".

(j) Clause 37 "Patent Rights (License) (May 1964)" is deleted and substituted in lieu thereof and incorporated herein by this reference is Paragraph 9-107.5(b) of ASPR, "Patent Rights (License) (Oct 1966)".

(k) Clause 38, "Filing of Patent Applications (Jan 1955)" is deleted and substituted in lieu thereof and incorporated herein by this reference is Paragraph 9-106 of ASPR, "Filing of Patent Applications (Oct 1966)".

25X1A

25X1A

25X1A

25X1A

SEC. CL.		ORIGIN		CONTROL NO.	
S		CMD/OSA		IDEA-0310-68	
DATE OF DOC.	DATE REC'D	DATE OUT	SUSPENSE DATE	CROSS REFERENCE OR POINT OF FILING	
TO [REDACTED]				ROUTING	
FROM Contracting Officer				DATE SENT	
SUBJ. Def Contr [REDACTED]					
DISTR: Cy 1-CMD/OSA					
2-Contractor					
3-FOD/OSA					
4- [REDACTED]					
5- [REDACTED]					
6- RQ					
COURIER NO.	ANSWERED	NO REPLY		3	